



Aug. 16, 2011

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
The Portals, TW-A325  
445 12th Street SW  
Washington, DC 20554

**Re: Notice of *Ex Parte* Presentation: WT Docket No. 11-65**

**In the Matter of Applications of AT&T Inc. and Deutsche Telekom AG  
For Consent to Assign or Transfer Control of Licenses and Authorizations**

Dear Ms. Dortch:

On Wednesday, August 3, 2011, Mr. James Courter, Vice Chairman of the Board of IDT Corporation, Michael Glassner, of C&M Transcontinental, LLC, and the undersigned (both on behalf of IDT) met with Renata Hesse, Melissa Tye, Paul Murray, Patrick DeGraba, Joel Rabinovitz and Jim Bird concerning the proposed merger of AT&T and T-Mobile.

In the course of the meeting, the FCC staff asked several questions pertaining to IDT and its activities in the prepaid mobile market. The following provides answers to some of the questions from that meeting:

**1. In what markets does TuYo Mobile provide service? How do these markets compare to the markets served by MetroPCS?**

- TuYo Mobile operates as a national provider, providing service as an MVNO (Mobile Virtual Network Operator) in virtually all T-Mobile markets throughout the continental US. TuYo is no longer activating new subscribers as its resale agreement with T-Mobile has expired and it is involved in litigation with T-Mobile. IDT/TuYo is only providing basic services to its remaining active subscribers.
- Metro PCS is an independent wireless service provider that claims to cover 90% of the US population with its own network, so there is a great deal of overlap between TuYo and MetroPCS coverage territory.

**2. What percentage of the pre-paid business does TuYo serve?**

- At the current time, TuYo's base of active subscribers is too small to even assign a percentage of the active wireless subscriber base in the U.S.

### **3. What is the size of the prepaid market?**

- The overall pre-paid market is growing significantly, both in raw numbers and as a percentage of the total wireless market. According to a report issued by the New Millennium Research Council (NMRC) in March, 2010, one out of every five cell phone subscribers was then using prepaid phones. The prepaid segment had grown to about 20 percent of the wireless market in the 4<sup>th</sup> quarter of 2009, up from 18 percent at the end of 2008.<sup>1</sup>
- A more recent NMRC report, issued on July 28, 2011, predicts that prepaid wireless customers will account for about one out of every four wireless subscribers by the end of 2011. In this most recent report, NMRC estimated that about 3 out of every 5 new wireless accounts opened in 2010 were for prepaid/no contract wireless service.<sup>2</sup>
- A new report issued by Bernstein Research found that “[p]re-paid and reseller subscriber growth was 21.0% [in the second quarter of 2011], perfectly in-line with results of the last two years. Post-paid was also flat at 1.9%. Pre-paid and reseller’s share of industry gross additions continues to rise as well, reaching an all-time high on a trailing twelve month basis. The category snared 60.2% of industry gross additions in Q2 compared to 56.3% a year ago.”<sup>3</sup>

### **4. How does the handset market work for IDT/TuYo? Does IDT purchase the phones that it sells to consumers? Are these refurbished phones? Are they smart phones?**

- During the term of IDT’s agreement with T-Mobile, IDT purchased handsets in support of its subscribers directly from handset manufacturers such as Motorola, Nokia and Sony/Ericsson. All handsets were new and not refurbished as mandated by T-Mobile. T-Mobile had a strict policy on the types of handsets that could be used on its network and all handsets used by IDT for TuYo had to be certified by T-Mobile and subjected to a rigorous certification and approval process. None of the handsets in TuYo’s portfolio would be categorized as a Smart Phone. Its higher cost handsets included features such as a Camera, or FM radio, or were “flip” phones. The advent of the Smart Phone era came near the end of IDT’s business relationship with T-Mobile. Had TuYo been able to continue its reseller relationship, it would have added more data-centric units to its line-up.

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<sup>1</sup> “Recession has Cell Phone Consumers’ Number, as Two out of Three New Wireless Subscribers in U.S. Go Prepaid.” New Millennium Research Council, Press Release, March 31, 2010 (available at [www.thenmrc.org](http://www.thenmrc.org)).

<sup>2</sup> “Major Milestone for U.S. Cell Phone Consumers: Prepaid to Account for 1 Out of 4 Wireless Subscriptions by End of 2011,” New Millennium Research Council, Press Release, July 28, 2011 (available at [www.thenmrc.org](http://www.thenmrc.org)).

<sup>3</sup> Pre-Paid Wireless: Time to Go Bargain Hunting... Upgrading MetroPCS to Outperform; Maintain Leap at Neutral,” Craig Moffet, Bernstein Research, Aug. 10, 2011, p. 6.

## **5. Why does IDT/TuYo focus on providing GSM-based service?**

- GSM is the dominant technology internationally. GSM-based networks cover 80% of the world's population in over 218 countries.<sup>4</sup> TuYo's GSM-based service is attractive to immigrant Hispanic customers because they are familiar with GSM services in their country of origin.

## **6. How would the proposed AT&T/T-Mobile merger harm the GSM market?**

- If AT&T becomes the only GSM-based provider in the U.S., it will have excessive control over the GSM market. (Verizon and Sprint, as well as the regional carriers such as Cricket and MetroPCS, deploy a CDMA technology.) AT&T could harm GSM consumers in a number of ways:
  - Handsets: If the merger between AT&T & T-Mobile is allowed, AT&T would hold enormous influence over the handset market in the U.S. AT&T could control the specific handsets approved for use on its network and by any resellers of its GSM service, and it could give AT&T leverage over device manufacturers to limit the availability of handsets to other providers. As the experience with the iPhone demonstrates, the availability of certain handsets can have a strong influence on consumers' choice of mobile provider.
  - MVNOs: If AT&T becomes the only GSM-based provider in the U.S., it would have enormous bargaining power over any GSM-based MVNO that seeks to resell its service. AT&T would essentially be able to dictate the terms to potential resellers because the MVNO would have no other alternative supplier of facilities-based GSM service.
  - International travelers: The vast majority of international travelers use GSM-based services and phones. Travelers coming to the US would need to use AT&T if they want to use their mobile phone, as AT&T would be the only GSM-based wireless provider in the U.S.

## **7. Does TuYo provide data services, or only voice?**

- During the period of time that TuYo was activating new service customers, it deployed what is referred to as a "walled garden" approach to data services. It supported downloads of specific types of content such as graphics and ringtones and certain texting services. TuYo did not support metered data services, which are necessary to conduct the type of web browsing, streaming video, and large file downloads that are being conducted by today's smart phones.

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<sup>4</sup> <http://gsmworld.com/technology/gsm/index.htm>.

**8. Does T-Mobile have its own prepaid business today?**

- Yes. T-Mobile offers a myriad of prepaid service options for Voice and Data bundles.<sup>5</sup> It has specific handset packages that are sold in company-owned locations, select national retailers and independent wireless retail stores throughout the U.S. T-Mobile's participation in the prepaid market in competition with TuYo gives T-Mobile an incentive to discriminate against IDT's TuYo prepaid services.
- As was stated earlier in our meeting and in our ex parte filing of August 4, 2011, T-Mobile has engaged in anticompetitive behavior against IDT and TuYo Mobile by threatening to cut off T-Mobile service to third-party retail outlets unless those outlets agreed to discontinue selling TuYo Mobile services. Because T-Mobile was (and is) a much larger company with many more customers than TuYo (which was essentially a start-up provider at that time), independent retail outlets were forced to stop selling TuYo services. (IDT provided evidence of an e-mail from T-Mobile to these independent retailers in its comments in this proceeding.) This action caused TuYo/IDT irreparable harm. This conduct is an example of the kind of anticompetitive activity that would become even worse if the only two providers of GSM mobile services in the U.S. are allowed to consolidate.

**9. Would it be difficult for IDT/TuYo to transition off of T-Mobile and resell Sprint?**

- Because IDT's TuYo subscribers are on the T-Mobile network using GSM service that is supported by a SIM card, each subscriber would need to port their number to a CDMA carrier (such as Sprint, Verizon, or MetroPCS) and receive a CDMA capable handset. The administrative/technical burden involved and the cost per customer would make that undertaking next to impossible and only a small percentage of the subscribers are likely to make this transition.

To summarize, if AT&T is allowed to acquire T-Mobile (the only other facilities-based GSM provider in the U.S.), there is a great risk that MVNOs will be unable to provide competitive mobile service using the GSM standard in the United States. Eliminating GSM-based competition would especially harm low-income Hispanic consumers who benefit from low-cost, GSM-based service provided by MVNOs such as TuYo Mobile.

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<sup>5</sup> See, <http://prepaid-phones.t-mobile.com/>.

If you have any further questions or need additional information on the answers above, please let me know.

Sincerely,

A handwritten signature in black ink that reads "John Windhausen, Jr." with a stylized flourish at the end.

John Windhausen, Jr.

President

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cc: Renata Hesse  
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